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9 UNITED STATES DISTRICT COURT
10 FOR THE EASTERN DISTRICT OF WASHINGTON

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 RICHARD DALE WRIGHT, JR.,

15 Defendant.

2:21-CR-00031-TOR-1

PLAINTIFF'S PSIR OBJECTIONS
SENTENCING MEMORANDUM

16 Plaintiff, United States of America, by and through Vanessa R. Waldref,
17 United States Attorney for the Eastern District of Washington, and David M.
18 Herzog, Assistant United States Attorney, submits the following sentencing
19 memorandum:

20 I. STATEMENT OF FACTS

21 In early April 2020, SA McEuen, with the FBI, downloaded about 100 child
22 pornography files from an IP address that resolved to Wright's residence in
23 Spokane Valley, WA. SA McEuen reviewed the images and recognized that some
24 of them were from the "Siberian Mouse" series, a well-known series of previously-
25 identified child pornography, and some were other child pornography videos and
26 images. SA McEuen downloaded child pornography from the same IP address on
27 both April 3 and April 4, 2020.
28

1 Subscriber records indicated the owner of the residence the IP address was
2 being utilized at was Wright, a local area volleyball coach.

3 On May 14, 2020, FBI executed the search warrant at Wright's residence
4 and recovered numerous digital devices that belonged to Wright. Wright and his
5 roommate were home. FBI interviewed Wright and his roommate. The
6 roommate's devices contained no indicia of child pornography and he had no idea
7 why FBI was there.

8 SA McEuen gave Wright a copy of the warrant and he agreed to talk to SA
9 McEuen outside in SA McEuen's car. Wright signed a written *Miranda* waiver,
10 and SA McEuen recorded his interview with Wright. Wright admitted to the
11 following:

12 • Wright owned the residence, and his roommate had no idea about
13 Wright's child pornography activities and was not involved. The roommate never
14 used Wright's digital devices and had his own devices.

15 • Wright mostly used the silver laptop that was in front of him when the
16 FBI arrived. When the FBI knocked, Wright sat up. The laptop was open and had
17 been on since the last night, so Wright closed the screen. Wright gave SA McEuen
18 the password for the computer and his cell phone. There was no encryption on his
19 laptop.
20

21 • After initially denying that he used peer-to-peer programs, Wright
22 admitted that he had installed BitTorrent a few months earlier and had downloaded
23 Siberian Mouse (the specific child pornography series SA McEuen downloaded
24 from Wright's IP address). Wright put the Siberian Mouse torrent files in the trash
25 and emptied the trash, but whenever he turned on the computer, BitTorrent opened
26 again and downloaded Siberian Mouse again. Wright admitted that he had
27 downloaded the Siberian Mouse torrent on about April 3, 2020.
28

1 • Wright searched for Siberian Mouse, Lolita and possibly Jailbait. The
2 earliest images he found depicted victims 12-13 years old. Wright has been
3 viewing and deleting underage sexual images of girls for approximately 15 years.

4 • Wright stored his images in the downloads folder, mixed with adult
5 pornography. Besides BitTorrent, he used Firefox Internet browser to search for
6 and receive child pornography.

7 In reviewing Defendant's devices, SA McEuen identified 12 videos and 523
8 child pornography images, with creation dates from December 2, 2017 through
9 January 1, 2019.

10 II. PSIR OBJECTIONS

- 11 1. The Court should apply the 2-level enhancement under U.S.S.G. §
12 2G2.2(b)(3)(F); Defendant has conceded he knowingly engaged in
13 distribution.

14 All of the facts the Court needs to find Defendant distributed child
15 pornography are stipulated to, pursuant to his plea agreement. Defendant came
16 to the attention of the FBI because the FBI was able to download child
17 pornography images from him via a peer-to-peer program (BitTorrent) he was
18 using. ECF No. 38 at 6. Review of Defendant's devices confirmed Defendant
19 did, indeed distribute the images to the FBI, and the images the FBI had
20 downloaded from Defendant were recovered from his devices. ECF No. 38 at 7.
21 The plea agreement details, "Defendant acknowledges that he used digital
22 devices to conduct Internet searches for child pornography, knowingly received
23 those images by downloading them from the Internet onto his digital devices,
24 and knowingly made them available to others using BitTorrent "Peer-to-Peer"
25 software." ECF No. 38 at 7.

26 As pertains to this specific enhancement, the plea agreement details, "The
27 United States and Defendant agree that Defendant's base offense level is
28

1 increased by an additional two (2) levels because the offense involved the
2 knowing distribution of child pornography. *See* U.S.S.G. § 2G2.2(b)(3)(F).”
3 ECF No. 38 at 8.

4 The enhancement should be applied to Defendant who was not new to
5 child pornography, having downloaded the same for fifteen years, and having
6 had to acknowledge he was sharing files in order to download the BitTorrent
7 client.

- 8 2. Defendant’s actions are not limited to receipt or solicitation of images and
9 he should not be afforded a 2-level reduction under U.S.S.G. §
10 2G2.2(b)(1).

11 Even assuming, *arguendo*, the evidence was insufficient to show knowing
12 distribution of child pornography in this case, Defendant still would not be
13 entitled to the two level reduction, as his actions simply were not limited to
14 solicitation and receipt. *See United States v. Fore*, 507 F.3d 412 (6th Cir. 2007)
15 (even though there was insufficient evidence that defendant intended to
16 distribute child pornography, defendant did not deserve the two-level reduction
17 under U.S.S.G. § 2G2.2(b)(1) because his conduct was not limited to the receipt
18 and solicitation of child pornography); *United States v. Filippi*, 705 F. App’x 16
19 (2d Cir. 2017) (no error in failure to give two level reduction for conduct limited
20 to the receipt or solicitation where district court made the undisputed finding that
21 defendant had placed child pornography in a computer folder shared by the peer-
22 to-peer software he used to obtain it, resulting in a law enforcement officer
23 successfully downloading such material).

24 Child pornography traffickers who come to the attention of law
25 enforcement because law enforcement is able to download child pornography
26 directly from them are not afforded the two-level reduction pursuant to U.S.S.G.
27 § 2G2.2(b)(1). *See United States v. Vallejos*, 742 F.3d 902, 908, n.5 (9th Cir.
28

2014) (distribution can be found where one “used a file-sharing program to download child pornography that, whether knowingly or unknowingly, allowed others access to those files” “It is enough to observe that Vallejos did not present evidence that he had so little knowledge of how LimeWire worked as would unmistakably negate his presumed intent to distribute the child pornography files on his computer to all LimeWire users”; *United States v. Kumar*, No. 2-15-CR-00185-KJD-GWH, 2020 WL 6381670, at *5 (D. Nev. Oct. 29, 2020) (“Because Kumar's conduct was not limited to receipt or solicitation, but rather included allowing an investigator to actually download from him, he is not entitled to the two-level reduction under § 2G2.2(b)(1).”); *United States v. Carreon*, 632 F. App'x 902 (9th Cir. 2015) (district court did not err in applying sentencing enhancement for offense involving distribution and denying reduction for lack of intent to distribute after defendant was convicted of production, receipt, and possession of child pornography, where defendant knowingly used file-sharing program).

III. SENTENCING FACTORS UNDER 18 U.S.C. §3553(a)

In determining the appropriate sentence, this Court should consider the factors as set forth in 18 U.S.C. § 3553(a).

1. The nature and circumstances of the offense and the history and characteristics of Defendant.

The circumstances of the offense involve Defendant’s sexual interest in children and his willingness to act on his sexual interest in children through receiving child pornography and, by using file sharing software, distributing the same. ECF No. 41 at ¶¶ 11-22.

The images Defendant maintained included children under 12. ECF No. 41 at ¶ 37. Defendant possessed over 600 child pornography images. ECF No. 41 at ¶ 39.

1 In evaluating the nature and circumstances of the offense, the government
2 asks the Court to specifically consider that 241 of the images Defendant
3 maintained, which had been submitted to the National Center for Missing and
4 Exploited Children (NCMEC) contain child victims who have been identified by
5 law enforcement. The identified series originated in countries outside of the United
6 States, and the victims portrayed therein do not have victim representation
7 requesting restitution at this time, nor are there impact statements the undersigned
8 can provide to the Court. The Court should absolutely consider, however, that
9 these are real children who were abused, and that Defendant used the
10 documentation of that abuse for sexual gratification.

11 2. The need for the sentence imposed to reflect the seriousness of the
12 offense, promote respect for the law, and to provide just punishment.

13 The government asks that the Court accept the plea agreement and sentence
14 Defendant to imprisonment for five (5) years. Such a sentence will entail a
15 downward variance from the Sentencing Guideline Range, and the government
16 supports such a variance here. As the Court is well aware, five years is the
17 government's typical recommendation in child pornography cases and this is such
18 a case. The government does not believe a higher sentence is necessary. The
19 government is asking for five years, or the same sentence the government has
20 sought for similarly situated defendants. The government is certainly also well
21 aware that five years' imprisonment is a very significant amount of time,
22 particularly for one without significant criminal history. To be clear, however, this
23 is a terribly serious crime, and the five years sought is absolutely necessary.

24 The government also asks the Court to order a lifetime term of supervised
25 release. Such a significant sentence is necessary to reflect the seriousness of the
26 offense, promote respect for the law and provide just punishment.
27
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1 3. The need for the sentence imposed to afford adequate deterrence to
2 criminal conduct.

3 Defendant has no criminal history points. Thus, one might argue the
4 requested five (5) year sentence is excessive. In this case, however, Defendant has
5 engaged in the criminal behavior at issue for quite some time—fifteen years by his
6 own admission, several years as corroborated through the created dates of child
7 pornography files on one device alone.

8 The government believes five years is a sufficient term of imprisonment to
9 support deterrence, but the government also recommends life term of supervised
10 release. The government is concerned by the recidivism rate for sex offenders
11 generally. Defendant held a position of trust given his position as a volleyball
12 coach. While the government has no evidence Defendant ever produced child
13 pornography of those children he coached, he does have photos of them in
14 swimwear and similar, which are not illegal, but are concerning given what
15 Defendant has been found guilty of pursuant to his plea. The government
16 maintains a lifetime of supervised release is appropriate. The government is
17 confident the recommended five year term of imprisonment followed by
18 supervised release for life will accomplish adequate deterrence.
19

20 4. The need for the sentence imposed to protect the public from further
21 crimes of Defendant.

22 As has been detailed, Defendant's crime is serious. Defendant's
23 demonstrated sexual interest in children makes him a real danger to the public.

24 The government maintains five (5) years imprisonment followed by a life
25 term of supervised release is sufficient, but not greater than necessary, and will
26 protect the public from further crimes of Defendant.
27
28

1 5. The need for the sentence imposed to provide Defendant with needed
2 educational or vocational training, medical care, or other correctional
3 treatment in the most effective manner.

4 Defendant has not identified any needed educational or vocational training.

5 6. The kinds of sentences available.

6 Defendant is subject to a sentence involving a term of imprisonment.

7 7. The kind of sentence contemplated by the Sentencing Guidelines.

8 The Sentencing Guidelines contemplate a term of imprisonment.

9 8. Any pertinent policy statements issued by the Sentencing Commission.

10 There are no pertinent policy statements in this case.

11 9. The need to avoid unwarranted sentence disparity among defendants with
12 similar records who have been found guilty of similar conduct.

13 As discussed herein, though the proposed sentence will entail a downward
14 variance from the United States Sentencing Guideline range, Defendant is subject
15 to a sentence similar to others similarly situated.

16 IV. GOVERNMENT'S SENTENCING RECOMMENDATION

17 The government recommends the court impose a sentence of five (5) years
18 imprisonment as well as a life term of supervised release.

19 Respectfully submitted this 19th day of April 2022.

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21
22 Vanessa R. Waldref
23 United States Attorney

24 s/David M. Herzog
25 David M. Herzog
26 Assistant United States Attorney
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1 CERTIFICATION

2 I hereby certify that on April 19, 2022, I electronically filed the foregoing
3 with the Clerk of the Court using the CM/ECF System which will send notification
4 of such filing to the following:

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